

# HOUSE BILL No. 1275

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 8-1-11.1-14; IC 30-4.

**Synopsis:** Court oversight of certain charitable trusts. Provides for probate court review of the executive compensation provided by a charitable trust engaged in the business of providing utility service. Authorizes certain local officials to petition for the court's review. Provides for annual reporting of proposed executive compensation. Prescribes the court's powers, the review procedures, and the standard of review. Requires the court to determine the compensation of the executive officer or officers for the following calendar year if the court rejects the proposed compensation upon reviewing a revised proposal in a particular year. Provides that the court's determination is conclusive of the facts determined by the court subject to the rights of appeal of the trust and the affected executive officer or officers.

**Effective:** July 1, 2014.

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**DeLaney**

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January 14, 2014, read first time and referred to Committee on Judiciary.

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Second Regular Session 118th General Assembly (2014)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

## HOUSE BILL No. 1275

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A BILL FOR AN ACT to amend the Indiana Code concerning trusts and fiduciaries.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 8-1-11.1-14 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 14. (a) The board of  
3 directors for utilities shall make quarterly accounting and reports to the  
4 city controller of such city, of all funds received and expended by it,  
5 and not ~~less~~ **later** than sixty (60) days after the end of each calendar  
6 year the city controller shall make publication in not less than two (2)  
7 newspapers of general circulation printed and published within said  
8 city of the material facts as set forth in the report of said board of  
9 directors for the preceding calendar year.  
10 (b) **The definitions set forth in IC 30-4-8 apply to this**  
11 **subsection. The third quarterly accounting required by subsection**  
12 **(a) for a calendar year must include a statement containing the**  
13 **proposed compensation that will be provided in the subsequent**  
14 **calendar year to each of the utility's executive officers. The city**  
15 **controller shall immediately forward the statement to each official**  
16 **described in IC 30-4-8-4.**



SECTION 2. IC 30-4-3-3, AS AMENDED BY P.L.238-2005, SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 3. (a) Except as provided in the terms of the trust **or in IC 30-4-8**, and subject to subsection (c), a trustee has the power to perform without court authorization, except as provided in sections 4(b) and 5(a) of this chapter, every act necessary or appropriate for the purposes of the trust including, by way of illustration and not of limitation, the following powers:

(1) The power to:

(A) deal with the trust estate;

(B) buy, sell, or exchange and convey or transfer all property (real, personal, or mixed) for cash or on credit and at public or private sale with or without notice; and

(C) invest and reinvest the trust estate.

(2) The power to receive additions to the assets of the trust.

(3) The power to acquire an undivided interest in a trust asset in which the trustee, in any trust capacity, holds an undivided interest.

(4) The power to manage real property in every way, including:

(A) the adjusting of boundaries;

(B) erecting, altering, or demolishing buildings;

(C) dedicating of streets, alleys, or other public uses;

(D) subdividing;

(E) developing;

(F) obtaining vacation of plats;

(G) granting of easements and rights-of-way;

(H) partitioning;

(I) entering into party wall agreements; and

(J) obtaining title insurance for trust property.

(5) The power to:

(A) grant options concerning disposition of trust property, including the sale of covered security options; and

(B) take options for acquisition of trust property, including the purchase back of previously sold covered security options.

(6) The power to enter into a lease as lessor or lessee, with or without option to renew.

(7) The power to enter into arrangements for exploration and removal of minerals or other natural resources and enter into a pooling or unitization agreement.

(8) The power to continue the operation or management of any business or other enterprise placed in trust.

(9) The power to:



- 1 (A) borrow money, to be repaid from trust property or
- 2 otherwise; and
- 3 (B) encumber, mortgage, pledge, or grant a security interest in
- 4 trust property in connection with the exercise of any power.
- 5 (10) The power to:
- 6 (A) advance money for the benefit of the trust estate and for all
- 7 expenses or losses sustained in the administration of the trust;
- 8 and
- 9 (B) collect any money advanced, without interest or with
- 10 interest, at no more than the lowest rate prevailing when
- 11 advanced.
- 12 (11) The power to prosecute or defend actions, claims, or
- 13 proceedings for the protection of:
- 14 (A) trust property; and
- 15 (B) the trustee in the performance of the trustee's duties.
- 16 (12) The power to:
- 17 (A) pay or contest any claim;
- 18 (B) settle a claim by or against the trust by compromise or
- 19 arbitration; and
- 20 (C) abandon or release, totally or partially, any claim
- 21 belonging to the trust.
- 22 (13) The power to insure the:
- 23 (A) trust estate against damage or loss; and
- 24 (B) trustee against liability with respect to third persons.
- 25 (14) The power to pay taxes, assessments, and other expenses
- 26 incurred in the:
- 27 (A) acquisition, retention, and maintenance of the trust
- 28 property; and
- 29 (B) administration of the trust.
- 30 (15) The power to:
- 31 (A) vote securities, in person or by a general or special proxy;
- 32 (B) hold the securities in the name of a nominee if the trustee
- 33 is a corporate trustee; and
- 34 (C) effect or approve, and deposit securities in connection
- 35 with, any change in the form of the corporation, including:
- 36 (i) dissolution;
- 37 (ii) liquidation;
- 38 (iii) reorganization;
- 39 (iv) acquisition; and
- 40 (v) merger.
- 41 (16) The power to employ persons, including:
- 42 (A) attorneys;



- 1 (B) accountants;
- 2 (C) investment advisors; and
- 3 (D) agents;
- 4 to advise and assist the trustee in the performance of the trustee's
- 5 duties.
- 6 (17) The power to effect distribution of property in cash, in kind,
- 7 or partly in cash and partly in kind, in divided or undivided
- 8 interests.
- 9 (18) The power to execute and deliver all instruments necessary
- 10 or appropriate to accomplishing or facilitating the exercise of the
- 11 trustee's powers.
- 12 (19) With respect to an interest in a proprietorship, partnership,
- 13 limited liability company, business trust, corporation, or another
- 14 form of business or enterprise, the power to:
- 15 (A) continue the business or enterprise; and
- 16 (B) take any action that may be taken by shareholders,
- 17 members, or property owners, including:
- 18 (i) merging;
- 19 (ii) dissolving; or
- 20 (iii) changing the form of business organization or
- 21 contributing additional capital.
- 22 (20) With respect to possible liability for violation of
- 23 environmental law, the power to:
- 24 (A) inspect or investigate property:
- 25 (i) the trustee holds or has been asked to hold; or
- 26 (ii) owned or operated by an organization in which the
- 27 trustee holds an interest or has been asked to hold an
- 28 interest;
- 29 to determine the application of environmental law with respect
- 30 to the property;
- 31 (B) take action to prevent, abate, or remedy an actual or
- 32 potential violation of an environmental law affecting property
- 33 held directly or indirectly by the trustee before or after the
- 34 assertion of a claim or the initiation of governmental
- 35 enforcement;
- 36 (C) decline to accept property into the trust or disclaim any
- 37 power with respect to property that is or may be burdened with
- 38 liability for violation of environmental law;
- 39 (D) compromise claims against the trust that may be asserted
- 40 for an alleged violation of environmental law; and
- 41 (E) pay the expense of any inspection, review, abatement, or
- 42 remedial action to comply with environmental law.



- 1 (21) The power to exercise elections with respect to federal, state,  
2 and local taxes.
- 3 (22) The power to select a mode of payment under any employee  
4 benefit plan or retirement plan, annuity, or life insurance payable  
5 to the trustee and exercise rights under the plan, annuity, or  
6 insurance, including the right to:
  - 7 (A) indemnification:
    - 8 (i) for expenses; and
    - 9 (ii) against liabilities; and
  - 10 (B) take appropriate action to collect the proceeds.
- 11 (23) The power to make loans out of trust property, including  
12 loans to a beneficiary on terms and conditions the trustee  
13 determines fair and reasonable under the circumstances. The  
14 trustee has a lien on future distributions for repayment of the  
15 loans.
- 16 (24) The power to pledge trust property to guarantee loans made  
17 by others to the beneficiary on terms and conditions the trustee  
18 considers to be fair and reasonable under the circumstances. The  
19 trustee has a lien on future distributions for repayment of the  
20 loans.
- 21 (25) The power to:
  - 22 (A) appoint a trustee to act in another jurisdiction with respect  
23 to trust property located in the other jurisdiction;
  - 24 (B) confer on the appointed trustee all the appointing trustee's  
25 powers and duties;
  - 26 (C) require the appointed trustee to furnish security; and
  - 27 (D) remove the appointed trustee.
- 28 (26) With regard to a beneficiary who is under a legal disability  
29 or whom the trustee reasonably believes is incapacitated, the  
30 power to pay an amount distributable to the beneficiary by:
  - 31 (A) paying the amount directly to the beneficiary;
  - 32 (B) applying the amount for the beneficiary's benefit;
  - 33 (C) paying the amount to the beneficiary's guardian;
  - 34 (D) paying the amount to the beneficiary's custodian under  
35 IC 30-2-8.5 to create a custodianship or custodial trust;
  - 36 (E) paying the amount to an adult relative or another person  
37 having legal or physical care or custody of the beneficiary to  
38 be expended on the beneficiary's behalf, if the trustee does not  
39 know of a guardian, custodian, or custodial trustee; or
  - 40 (F) managing the amount as a separate fund on the  
41 beneficiary's behalf, subject to the beneficiary's continuing  
42 right to withdraw the distribution.



(27) The power to:

(A) combine at least two (2) trusts into one (1) trust; or

(B) divide one (1) trust into at least two (2) trusts;

after notice to the qualified beneficiaries, if the result does not impair the rights of any beneficiary or adversely affect achievement of the purposes of the trust.

(b) Any act under subsection (a)(4), an option under subsection (a)(5), a lease under subsection (a)(6), an arrangement under subsection (a)(7), and an encumbrance, mortgage, pledge, or security interest under subsection (a)(9) may be for a term either within or extending beyond the term of the trust.

(c) In acquiring, investing, reinvesting, exchanging, retaining, selling, and managing property for any trust, the trustee thereof shall exercise the judgment and care required by IC 30-4-3.5. Within the limitations of the foregoing standard, the trustee is authorized to acquire and retain every kind of property, real, personal, or mixed, and every kind of investment, including specifically, but without in any way limiting the generality of the foregoing, bonds, debentures, and other corporate obligations, stocks, preferred or common, and real estate mortgages, which persons of prudence, discretion, and intelligence acquire or retain for their own account, and within the limitations of the foregoing standard, the trustee is authorized to retain property properly acquired, without limitation as to time and without regard to its suitability for original purchase. Within the limitations of the foregoing standard, the trustee is authorized to sell covered security options and to purchase back previously sold covered security options.

(d) If a distribution of particular trust assets is to be made to two (2) or more beneficiaries entitled to receive fractional shares in those assets, the trustee may distribute the particular assets without distributing to each beneficiary a pro rata share of each asset. However, the trustee shall:

(1) distribute to each beneficiary a pro rata share of the total fair market value of all of the particular assets as of the date of distribution; and

(2) cause the distribution to result in a fair and equitable division among the beneficiaries of capital gain or loss on the assets.

(e) If the trust is terminated or partially terminated, the trustee may send to the beneficiaries a proposal for distribution. If the proposal for distribution informs the beneficiary that the beneficiary:

(1) has a right to object to the proposed distribution; and

(2) must object not later than thirty (30) days after the proposal for distribution was sent;



the right of the beneficiary to object to the proposed distribution terminates if the beneficiary fails to notify the trustee of an objection within the time limit set forth in subdivision (2).

SECTION 3. IC 30-4-6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 2. ~~(Continuing Jurisdiction)~~ **Except as provided in IC 30-4-8-7**, the court will have continuing jurisdiction to supervise the administration of the trust only if the settlor expressly directs in the terms of the trust that the court is to have that jurisdiction.

SECTION 4. IC 30-4-8 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]:

**Chapter 8. Oversight of Qualified Trusts**

**Sec. 1. This chapter applies to compensation paid after December 31, 2014, to an executive officer of a qualified trust.**

**Sec. 2. As used in this chapter, "compensation" refers to financial benefits, wages, salaries, bonuses, and other things of value conferred upon a person for services rendered. The term does not include any reimbursement for expenses incurred by a person.**

**Sec. 3. As used in this chapter, "executive officer" means an individual compensated by a qualified trust for performing the duties of one (1) or more of the following positions:**

- (1) President of the board of trustees.**
- (2) President of the board of directors.**
- (3) Trustee.**
- (4) Director.**
- (5) Chief executive officer.**
- (6) President.**
- (7) Chief operating officer.**
- (8) Chief financial officer.**
- (9) Chief legal officer.**
- (10) Vice president.**
- (11) Any other position in which an individual performs duties ordinarily associated with a position described in subdivisions (1) through (10).**

**Sec. 4. As used in this chapter, "qualified petitioner" means any of the following officials of a consolidated city:**

- (1) The mayor.**
- (2) The president of the fiscal body.**
- (3) The ranking member of the minority party on the fiscal body, if any.**

**Sec. 5. As used in this chapter, "qualified trust" means a**





1 charitable trust:

- 2 (1) organized under Indiana law for the purpose of providing  
 3 utility service; and  
 4 (2) engaged in the business of providing utility service in  
 5 Indiana.

6 Sec. 6. As used in this chapter, "utility service" has the meaning  
 7 set forth in IC 6-2.3-1-14.

8 Sec. 7. The court has continuing jurisdiction to carry out the  
 9 powers and duties of the court set forth in this chapter concerning  
 10 the oversight of a qualified trust.

11 Sec. 8. The court shall review the proposed compensation of  
 12 each of the executive officers of a qualified trust, as set forth in the  
 13 third quarterly accounting described in IC 8-1-11.1-14(b), if the  
 14 following requirements are met:

- 15 (1) A qualified petitioner files a petition with the court  
 16 requesting the court to review the proposed compensation  
 17 under this chapter.  
 18 (2) A petition described in subdivision (1) is filed not later  
 19 than thirty (30) days after the date that the qualified  
 20 petitioner receives notice of the proposed compensation under  
 21 IC 8-1-11.1-14(b).  
 22 (3) The qualified petitioner provides notice to the qualified  
 23 trust and the attorney general in the form required by  
 24 IC 30-4-6-6.

25 Sec. 9. The court shall approve or reject the proposed  
 26 compensation of each of the executive officers of the qualified trust,  
 27 as set forth in the third quarterly accounting described in  
 28 IC 8-1-11.1-14(b), not later than (30) days after the date a petition  
 29 for review is filed under section 8 of this chapter.

30 Sec. 10. (a) The court may approve the proposed compensation  
 31 of an executive officer if the court finds that the proposed  
 32 compensation is reasonable:

- 33 (1) considering the purposes of the public charitable trust  
 34 employing the executive officer; and  
 35 (2) when compared to the compensation paid to individuals  
 36 employed in comparable positions by similarly sized  
 37 municipal utilities.

38 (b) If the court finds that the proposed compensation of an  
 39 executive officer is unreasonable using the criteria described in  
 40 subsection (a), the court shall issue an order:

- 41 (1) rejecting the proposed compensation;  
 42 (2) containing the findings of fact upon which the court's



1 decision is based; and

2 (3) requiring the qualified public trust to submit a revised  
3 compensation proposal for the court's review under this  
4 section not later than thirty (30) days after the date the order  
5 is issued.

6 (c) If the court rejects a revised compensation proposal  
7 submitted under subsection (b)(3), the court shall determine the  
8 compensation of the affected executive officer or officers for the  
9 following calendar year. The court's determination is conclusive of  
10 the facts determined by the court subject to the rights of appeal of  
11 the qualified trust and the affected executive officer or officers.

12 (d) The court shall provide written notice of any decision made  
13 under this section to the board of trustees of the qualified trust, the  
14 affected executive officer or officers, and the qualified petitioner  
15 who requested the court's review under section 8 of this chapter.

16 Sec. 11. The court may do any of the following when considering  
17 a petition filed under section 8 of this chapter:

18 (1) Require the petitioner and the qualified trust to submit  
19 any information relevant to the court's consideration of the  
20 petition.

21 (2) Conduct a hearing.

22 (3) Receive and consider written recommendations from at  
23 least two (2) individuals who have experience with the  
24 operations of similarly sized municipal utilities to assist the  
25 court in applying the criteria described in section 10 of this  
26 chapter.

